STATE OF MICHIGAN

COURT OF APPEALS

DRYDEN TOWNSHIP CHAPTER, NORTH AREA CITIZENS, HARRY NEELY, KIM COOMBE, JOSEPH FARRUIGA, and WILLIAM THOMPSON,

Plaintiffs-Appellants,

v

TOWNSHIP OF DRYDEN and COPELEY HILL, INC.,

Defendants-Appellees.

UNPUBLISHED
July 17, 2003

No. 234078
Lapeer Circuit Court
LC No. 00-028990-CZ

Before: Gage, P.J., and Wilder and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's March 5, 2001 order granting defendants' motion for summary disposition under 2.116(C)(5). We affirm.

This injunction action arose when defendant Copeley Hill, an executive retreat center and banquet hall, tried to obtain a liquor license in a rural neighborhood where only non-commercial uses are permitted. Defendant township agreed to conditionally support Copeley Hill's liquor licensure, but Copeley Hill's neighbors filed suit to nullify the agreement and stop Copeley Hill's commercial use of its property. The trial court found that plaintiffs failed to allege or prove any special injury that could give them standing to abate the alleged public nuisance.

Plaintiffs argue that the trial court erred when it found that they failed to demonstrate any special damages. Plaintiffs claim that their proximity to Copeley Hill's unauthorized use automatically grants them standing. This Court reviews a trial court's MCR 2.116(C)(5) grant of summary disposition de novo. *Franklin Historic Dist Study Committee v Village of Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000).

A party lacks standing when it fails to demonstrate "an actual injury or likely chance of immediate injury that is different from that of the general public." *Franklin, supra* at 187. Accordingly, a private landowner may not sue to abate a public nuisance unless the landowner suffers some special injury because of the nuisance. *Towne v Harr*, 185 Mich App 230, 233; 460 NW2d 596 (1990). Notwithstanding Copeley Hill's continuous operation for over twelve years, however, plaintiffs failed to demonstrate any particular damage caused by its use. Plaintiffs did

not present a single affidavit or allegation that described how Copeley Hill's use interfered with their enjoyment of their property. Because plaintiffs failed to establish any special injury, the trial court correctly found that they lacked standing to challenge Copeley Hill's operation as an executive retreat. *Towne, supra* at 233.

Plaintiffs argue, however, that this Court presumes special injury when an adjoining landowner brings the abatement action. This Court rejected an identical argument, when it decided that an abutting landowner lacked standing to appeal an adverse zoning board of appeals decision. *Village of Franklin v Southfield*, 101 Mich App 554, 557-558; 300 NW2d 634 (1980). Therefore, plaintiffs lacked standing to stop Copeley Hill's executive retreat operation.

Likewise, plaintiffs do not specify the nature of harm expected from Copeley Hill's use of a liquor license. Plaintiffs argue that our Supreme Court has taken judicial notice of how the licensed distribution of alcohol negatively impacts surrounding areas. *Morse v Liquor Control Commission*, 319 Mich 52, 60; 29 NW2d 316 (1947), overruled on other grounds 395 Mich 679 (1976). Nevertheless, the trial court correctly distinguished between *Morse* and the case at bar. In *Morse*, the sales were open to the public on a walk-in basis and the churchgoers immediately pressed their right to abate the nuisance. *Id*. at 55. In this case, plaintiffs pleaded and proved that Copeley Hill has obliged its guests with beer, wine, and liquor since 1999. Furthermore, the opposed agreement limits alcohol sales to those guests who have reserved Copeley Hill in advance. Therefore, the churchgoers in *Morse* were exposed to a greater risk of disturbance and were required to speculate about the potential harm because of their prophylactic action. Here, the resident plaintiffs are insulated from "walk-in" alcohol sales, and have not pleaded any ill effects from Copeley Hill's longstanding practices. This implies that Copeley Hill has successfully suppressed the ill effects that the *Morse* Court judicially noticed. Because the facts differ from those in *Morse*, the trial court correctly required plaintiffs to demonstrate some special injury resulting from Copeley Hill's use. *Towne, supra* at 233. Because plaintiffs failed to demonstrate any special injury, we affirm the trial court's grant of defendants' motion for summary disposition.

Plaintiffs also argue that the zoning ordinance expressly confers standing on any resident within a district that contains a public nuisance. Plaintiffs forfeited this issue when they failed to raise it below, so we need not address it here. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Because plaintiffs failed to establish standing, we need not address the other errors asserted.

Affirmed.

/s/ Hilda R. Gage
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood